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Supreme Court of the United States

OCTOBER TERM, 1932

No. 176

NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY,
Appellant

v.

ROY C. WALLACE, Comptroller of the Treasury of the State of Tennessee, et. al.,
Appellees

MOTION OF EDWIN M. BORCHARD AND CHARLES E. CLARK FOR LEAVE TO FILE BRIEF AS *Amici Curiae*, and

BRIEF ON JURISDICTION

EDWIN M. BORCHARD,
of New Haven, Conn.

CHARLES E. CLARK,
of New Haven, Conn.
Amici Curiae.

Supreme Court of the United States

OCTOBER TERM, 1932

No. 176

NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY, *Appellant*

v.

ROY C. WALLACE, COMPTROLLER OF THE TREASURY OF THE STATE OF TENNESSEE, ET AL., *Appellees*

MOTION FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE.*

In the above-entitled case the undersigned move for leave to file the accompanying brief as *amici curiae.*

The undersigned do not represent private parties interested in the questions presented in this case, but are themselves interested as students and teachers of law.

Counsel for both sides have consented to the filing of this brief.

EDWIN M. BORCHARD,
of New Haven, Conn.

CHARLES E. CLARK,
of New Haven, Conn.
As Amici Curiae.

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Supreme Court of the United States

OCTOBER TERM, 1932

No. 176

NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY, *Appellant*

v.

ROY C. WALLACE, Comptroller of the Treasury of the State of Tennessee, et al., *Appellees*

BRIEF OF EDWIN M. BORCHARD AND CHARLES E. CLARK, AS *AMICI CURIAE*.

The Court in this cause issued on October 10, 1932, the following order: "Further consideration of the jurisdiction of this Court is postponed to the hearing upon the merits. The attention of counsel is invited to the question whether a case or controversy is presented, in view of the nature of the proceedings in the state courts."

The proceedings in the state courts were brought for a declaratory judgment.

Preliminary Statement.

By chapter 58 of the Tennessee Acts of 1923, as amended (R. 14-16, 18-19), the State of Tennessee purported to exact an excise tax of two cents a gallon from each seller, storer,

or distributor of gasoline for the privilege of doing a gasoline business in Tennessee.

The complainant railroad uses gasoline in its railroad business and is obliged to store it occasionally and distribute it for subsequent use. The State Comptroller undertook to compel the railroad to pay a privilege tax in 1931 of $13,381.23 for the storing and distributing of gasoline. The railroad thereupon, on September 29, 1931, brought an action under the Tennessee Uniform Act on Declaratory Judgments for a declaratory judgment against the State Comptroller of the Treasury, the State Commissioner of Finance and Taxation, and the Attorney General, contending that it was not in the business of storing or distributing gasoline, that the gasoline was consumed in interstate commerce, and that the railroad was consequently exempt from the application of the statute and of the tax assessed thereunder. (R. 12-23).

The defendant, enforcing officials of Tennessee, demurred to the complainant's bill. While the procedural grounds of demurrer were overruled, the substantive grounds were sustained. (R. 7, 32.) Thereupon the complainant appealed to the Supreme Court of Tennessee, and on June 4, 1932, the decision below was affirmed.

Thus the complainant unsuccessfully claimed, and the defendant successfully denied, complainant's exemption from the statute, which the defendants were in process of enforcing by demanding the tax claimed to be due.

The question to which the attention of counsel is invited raises the problem whether the decision of the Supreme Court of Tennessee is "a final judgment or decree in any suit in the highest court of a state" under Judicial Code, Sec. 237, 28 U. S. C. A., Sec. 344, which, in turn, raises the problem whether the suit here is a "case" or "controversy" within the enumeration of the grants of jurisdiction to this Court under Article III, Section 2, of the Constitution of the United States. Had the suit been brought for an injunction, or for a declaration of immunity plus an injunction, to restrain the collection of the tax, it seems settled beyond dispute that it would then have been a "case" or "controversy."

Graniteville Mfg. Co. v. Query, 283 U. S. 376;
East Ohio Gas Co. v. Tax Commission of Ohio, 283 U. S. 465;
State Board of Tax Commissioners of Indiana v. Jackson, 283 U. S. 527;
State Tax Commission of Mississippi v. Interstate Natural Gas Co., 284 U. S. 41;
Eastern Air Transport, Inc. v. South Carolina Tax Commission, 285 U. S. 147;
Fox Film Corp. v. Doyal, 286 U. S. 123.

The narrow limits of the issue presented may be seen by observing the prayers for relief of the appellant in its bill of complaint to the trial court and the decrees of both the trial court and the Supreme Court of Tennessee. After several prayers for findings by the court as to the invalidity of the tax assessed against it and of the statute under which the assessment is made, the complainant "further prays for such other, further and general relief as it may be entitled to in the premises." (R. 23.) The decree of the Chancery Court of Davidson County is that "the bill as amended be and the same is hereby dismissed," and that the defendants recover of the appellant and its sureties "all costs of this cause, *for which execution may issue.*" (R. 33.) (Italics ours.) The decree of the Supreme Court of Tennessee is that "the decree of the Chancellor be in all things affirmed and that the demurrer be sustained, the original bill be dismissed" and that the appellant and its sureties "will pay all of the costs of this cause, *for which let fi. fa. issue.*" (R. 9.) (Italics ours.)

Had the prayer for general relief included—or been construed to include—a prayer *"for an injunction,"* all the subsequent proceedings might have remained the same as at present, and yet this issue would not have been presented.

We do not analyze the pleadings in detail, for that has been done competently by counsel for the parties. They are important as showing that, whatever may be the technical legal requirements, actually there was a real issue between the parties as thoroughly contested on the points in dispute as it could be in any form of judicial proceedings. The de-

fendants, state officers, were claiming a certain sum of money from the complainant. The latter attacked the assessment against it with detailed and precise claims of invalidity. See Bill of Complaint, R. 11-23, with amendments, R. 28, 29. Defendants by demurrer attacked these claims both on grounds of procedure and of substance, R. 29-32. (The procedural grounds asserted in the demurrer do not go to the validity of the declaratory judgment but argue only that another remedy should have been used—a not unusual claim in tax cases even in answer to a prayer for an injunction against the collection of a tax.) The demurrer was sustained by the courts and the matters in dispute between the parties were definitely adjudicated.

Question Presented.

The question presented is whether a state court judgment entered on a complaint asserting a claim of federal right and stated to be brought upon a statute authorizing the entry of declaratory judgments, though also praying for general relief, which judgment dismissed the complaint and awarded execution for costs to the defendants, is subject to review by this Court.

Although treated by the court below as a declaratory judgment, the name has no significance on this issue; nor is there involved the reviewability of all and sundry declaratory judgments which state courts may enter. The issue is limited to the one question whether *this particular judgment* was one upon a "case" or "controversy" within the rules of federal review.

Summary of Argument.

I. Each State has general jurisdiction to regulate the procedure of its own courts.

II. Thirty-two states and territories, following the procedure well established in England and in other countries, have determined that the action for a declaratory judgment,

so-called, is a useful and necessary part of their court procedure and it is now in general use in these jurisdictions.

III. In the present case, the highest court of the State of Tennessee, following the procedure which it, in common with other states, has established as regular and proper, has made a final adjudication with reference to a Tennessee tax statute, binding upon all parties so far as the power of the state can make it so, and adjudicating costs against the appellant.

IV. A decision by this Court that the judgment of the Supreme Court of Tennessee is not subject to appeal, with the effect of rendering doubtful if not of nullifying an established procedure of a state court, is a control of state court procedure which this Court should not assume except under the compulsion of an overriding federal law.

V. There is no constitutional provision or adjudication of this Court requiring a decision that the state court judgment here in question is not subject to appeal; the contrary holding is more consistent with the due regard had by this Court for the sovereign powers of the states.

VI. Irrespective of any conflict between state and federal authority in this case, the procedure of courts, which is not an end in itself but only a means to the end of accomplishing justice, should be subject to modification and improvement as the need may appear and, in the absence of express provision, it should not be held controlled by the rigid and practically unchangeable limitations of a written constitution.

VII. The judgment of the Supreme Court of Tennessee in this particular action decides an actual controversy, is final, and is, therefore, subject to appeal.

POINT I.

Each State has general jurisdiction to regulate the procedure of its own courts.

It has been repeatedly held by this court that the judicial procedure by which private rights are contested in the states may be determined by each state for itself.

A state has full power over remedies and procedure in its own courts, and can make any order it pleases in respect thereto, provided that substance of right is secured without unreasonable burden to parties and litigants. *York v. Texas*, 137 U. S. 15 (1890).

When the essential elements of a court having jurisdiction in which an opportunity for a hearing is afforded are present, the power of a state over its methods of procedure is substantially unrestricted by the due process clause of the Constitution. *Jordan v. Massachusetts*, 225 U. S. 167 (1912).

> See also *Iowa Central Ry. Co. v. Iowa*, 160 U. S. 389 (1896);
> *Ex parte Reggel*, 114 U. S. 642 (1885);
> *Grand Rapids & Indiana Ry. v. Butler*, 159 U. S. 87 (1895);
> *Tripp v. Santa Rose Street Ry.*, 144 U. S. 126 (1892) ("The decision . . . below rests upon grounds of state procedure with which it is not our province to interfere");
> *West v. Louisiana*, 194 U. S. 258 (1904).

In the recent case of *Hardware Dealers Mut. Fire Ins. Co. v. Glidden Co.*, 284 U. S. 151, at 158 (1931), this Court remarked:

> "It suffices to say that the procedure by which rights may be enforced and wrongs remedied is peculiarly a subject of state regulation and control. . . . In the exercise of that power and to satisfy a public need, a state may choose the remedy best adapted, in the legislative judgment, to protect the interests concerned, provided its choice is not unreasonable or arbitrary, and the procedure it adopts satisfies the constitutional requirement of reasonable notice and opportunity to be heard."

Neither of the parties herein has in its pleadings contended that the Tennessee procedure followed in this case deprived it of due process of law under the state or federal constitution. Such a contention could hardly be successfully advanced.

POINT II.

Thirty-two states and territories, following the procedure well established in England and in other countries, have determined that the action for a declaratory judgment, so-called, is a useful and necessary part of their court procedure and it is now in general use in these jurisdictions.

Statutes authorizing courts of the states and territories of the United States to render declaratory judgments have been passed in 32 states and territories, as follows:

Arizona, 1927, (Uniform Act);
California, 1921;
Colorado, 1923 (Uniform Act);
Connecticut, 1921;
Florida, 1919;
Indiana, 1927 (Uniform Act);
Kansas, 1921;
Kentucky, 1922;
Massachusetts, 1929;
Michigan, 1929;
Nebraska, 1929 (Uniform Act);
Nevada, 1929 (Uniform Act);
New Hampshire, 1929;
New Jersey, 1924 (Uniform Act);
New York, 1921;
North Carolina, 1931 (Uniform Act);
North Dakota, 1923 (Uniform Act);
Ohio, 1931;
Oregon, 1927 (Uniform Act);
Pennsylvania, 1923 (Uniform Act);
Rhode Island, 1923;
South Carolina, 1922;
South Dakota, 1925 (Uniform Act);
Tennessee, 1923 (Uniform Act);

Utah, 1925 (Uniform Act);
Vermont, 1931 (Uniform Act);
Virginia, 1922;
Wisconsin, 1927 (Uniform Act);
Wyoming, 1923 (Uniform Act);
Hawaii, 1925;
Philippines, 1930;
Porto Rico, 1931 (Uniform Act).

The constitutionality of these statutes, which has involved an examination of every conceivable test of justiciability, has been established in eighteen states. The Michigan Supreme Court, which at first assumed that the statute required or permitted the court to render advisory opinions or decide moot cases without adversary parties [*Anway v. Grand Rapids Ry.*, 211 Mich. 592, 179 N. W. 350 (1920)], has in effect overruled that decision, after a clarification of the statute [*Washington-Detroit Theatre Co. v. Moore*, 249 Mich. 673, 229 N. W. 618 (1930)]. Except for the case now overruled, the states of the United States have been unanimous in upholding the constitutionality of these statutes.

Arizona: Morton v. Pacific Constr. Co., 36 Ariz. 97, 283 Pac. 281 (1929);
California: Blakeslee v. Wilson, 190 Cal. 479, 213 Pac. 495 (1923);
Connecticut: Braman v. Babcock, 98 Conn. 549, 120 Atl. 150, 152 (1923);
Florida: Sheldon v. Powell, 99 Fla. 782, 128 So. 258 (1930);
Indiana: Zoercher v. Agler, 202 Ind. 214, 172 N. E. 186 (1930);
Kansas: State ex rel. Hopkins v. Grove, 109 Kan. 619, 201 Pac. 82 (1921);
Kentucky: Black v. Elkhorn Coal Corp., 233 Ky. 588, 26 S. W. (2d) 481 (1930);
Michigan: Washington-Detroit Theater Co. v. Moore, 249 Mich. 673, 229 N. W. 618 (1930);
Nebraska: Lynn v. Kearney County, 121 Neb. 122, 236 N. W. 192 (1931);
New Hampshire: Faulkner v. City of Keene, 85 N. H. 147, 155 Atl. 195 (1931);
New Jersey: McCrory Stores Corp. v. S. M. Braunstein, Inc., 102 N. J. L. 590, 134 Atl. 752 (1926);

New York: Board of Education v. Van Zandt, 119 Misc. 124, 195 N. Y. S. 297 (1922), *aff'd,* 234 N. Y. 644, 138 N. E. 481 (1923);
Pennsylvania: Kariher's Petition (No. 1), 284 Pa. 455, 131 Atl. 265 (1925);
Tennessee: Miller v. Miller, 149 Tenn. 463, 261 S. W. 965 (1924);
Virginia: Patterson's Ex'rs v. Patterson, 144 Va. 113, 131 S. E. 217 (1926);
Wisconsin: City of Milwaukee v. Chicago & N. W. Ry., 201 Wis. 512, 230 N. W. 626 (1930);
Wyoming: Holly Sugar Corp. v. Fritzler, 42 Wyo. 446, 296 Pac. 206 (1931).

In the other states the constitutionality of the statute has been taken for granted.

In the past ten years some seven hundred cases decided under these statutes have been reported. Over one hundred opinions appear in the various New York reports. Additional cases, not reported, have probably been brought to the various trial courts. This emphasizes the fact that a considerable number of issues have been determined, while indicating that the courts are not burdened by the procedure. The number of cases that could not have been brought under other forms, while perhaps the most important of all, are relatively few.

Appendix I, *infra,* p. 33, contains a few notes on the history of the procedure in England and its availability in various types of disputes, including those involving taxation, while some of the cases in which the declaratory judgment has been expressly approved by the courts are listed in Appendix II, *infra,* p. 39. Appendix III, *infra,* p. 43, gives a bibliography of articles upon the subject.

An examination of the reported cases shows that under the declaratory judgment statutes the parties may secure a prompt adjudication of their rights, without requiring—although permitting—a prior breach or violation. They have been especially used to accord judicial relief against peril and insecurity in legal relations. On the whole, they have followed the English practice and the interpretation of the English Supreme Court Rules of 1883. So trifling was the British amendment instituting the procedure that it was effected by

mere rule of court. In fact, it was a power always inherent in courts, especially courts of equity, and exercised from time immemorial in actions to quiet title, to declare marriages valid or void, to determine disputed titles to property, to construe wills and written instruments, to determine priorities and the existence or non-existence of liens.

Distinctive characteristic of declaratory judgment. The judgment for a declaration of rights or declaratory judgment differs in no respect from a condemnatory or executory judgment for coercive relief, such as damages, injunction, or specific performance, except in the fact that the judgment carries no coercive decree or order. "The distinctive characteristic of the declaratory judgment is that the declaration stands by itself; that is to say, no executory process follows as of course." *Kariher's Petition (No. 1)*, 284 Pa. 455, 131 Atl. 265, 268 (1925).

Execution, however, is not a part of the judicial function of adjudication of contested rights.

> *Fidelity Nat. Bank & Trust Co. v. Swope*, 274 U. S. 123;
> *Old Colony Trust Co. v. Commissioner of Internal Revenue*, 279 U. S. 716.

The declaratory judgment involves and implies an actual controversy. An action for a declaration of rights, as actively practiced in all countries having Anglo-Saxon traditions, must, to be admissible, involve a controversy between adverse parties having an immediate and material interest in the adjudication of their rights, which are definitely established, determined, and declared by the judgment.

> *Hess v. Country Club Park*, 296 Pac. 300 (Cal. App. 1931);
> *Kariher's Petition (No. 1)*, 284 Pa. 455, 131 Atl. 265 (1925);
> *Sheldon v. Powell*, 99 Fla. 782, 128 So. 258 (1930).

As stated by the Supreme Court of Tennessee in *Miller v. Miller*, 149 Tenn. 463, 261 S. W. 965 (1924):

> "As to the necessity of a *bona fide* controversy as to which the judgment will be *res judicata*, it was announced in *Russian Commercial and I. Bank v. British Bank* (Eng.), reported in 19 A. L. R. 1101, that the rule in Scotland, where the action of declarator has existed for hundreds of years, is that the question must be a real, and not a theoretical, question; the person raising it must have a real interest to raise it; he must be able to secure the proper contradicter, that is to say, some one presently existing who has a true interest to oppose the declaration sought." (pp. 484-485.)

An examination of state declaratory judgments in which statutes and ordinances have been reviewed for constitutionality, construction, or interpretation discloses that almost without exception they involved issues of law, without any dispute as to the facts.

The courts have been watchful to avoid an adjudication or declaration of rights, if any of the elements of a justiciable controversy was lacking. Thus, cases have been dismissed for lack of justiciable controversy, either because of want of the necessary legal interest in the issue on the part of the plaintiff or defendant,

Williams v. Flood, 124 Kan. 728, 262 Pac. 563 (1928);
Purity Oats Co. v. State, 125 Kan. 558, 264 Pac. 740 (1928);
Garden City News v. Hurst, 129 Kan. 365, 282 Pac. 720 (1929);
In re Annexation of Part of Lancaster Township to City of Lancaster, 6 D. & C. 36 (Pa. 1924);
Bell Telephone Co. v. Lansdowne Borough, 18 Dela. Cy. 307 (Pa. 1927) (plaintiff challenges zoning ordinance, because he *might* want to buy in restricted area);
Perry v. City of Elizabethton, 160 Tenn. 102, 22 S. W. (2d) 359 (1929).

or because the parties were not adverse in interest,

Crawford v. Favour, 34 Ariz. 13, 267 Pac. 412 (1928);

Reese v. Adamson, 297 Pa. 13, 146 Atl. 262 (1929);
Wagner v. County of Somerset, 96 Pa. Super. Ct. 434 (1929);
Public Defense Ass'n v. Allegheny County, 6 D. & C. 182 (Pa. 1924);
Cummings v. Shipp, 156 Tenn. 595, 3 S. W. (2d) 1062 (1928).

or because the facts were not sufficiently ripe for judicial decision, in which event the judgment would merely have been an advisory opinion,

Crawford v. Favour, 34 Ariz. 13, 267 Pac. 412 (1928);
Hayden Plan Co. v. Friedlander, 97 Cal. App. 12, 275 Pac. 253 (1929);
Lisbon Village Dist. v. Town of Lisbon, 85 N. H. 173, 155 Atl. 252 (1931);
cf. Mason's Adm'r v. Mason's Guardian, 239 Ky. 208, 39 S. W. (2d) 211 (1931);
In re Freeholders of Hudson County, 105 N. J. L. 57, 143 Atl. 536 (1928);
Lockwood v. Baird, 59 N. D. 713, 231 N. W. 851 (1930);
Ladner v. Siegel, 294 Pa. 368, 144 Atl. 274 (1928).

or because in the court's discretionary view, there was an absence of certain parties deemed necessary to the suit,

Denver Land Co. v. Moffat Tunnel Impr. Dist., 87 Colo. 1, 284 Pac. 339 (1930);
Coke v. Shanks, 209 Ky. 723, 273 S. W. 552 (1925);
Additional Law Judge, 53rd Jud. Dist., 10 D. & C. 577 (Pa. 1927);
Cummings v. Shipp, 156 Tenn. 595, 3 S. W. (2d) 1062 (1928).

or because the court's judgment would not have finally settled the issue,

Additional Law Judge, 53rd Jud. Dist., 10 D. & C. 577 (Pa. 1927).

or because the court was not in a position to make its judgment effective.

State ex rel. Baird v. Board of Commissioners of Wyandotte County, 117 Kan. 151, 230 Pac. 531 (1924).

The procedural and substantive requisites of justiciability are evidently watched as closely in a suit for a declaratory judgment as in a suit for any other form of relief. It is, however, true that a citizen directly threatened with a criminal penalty under a statute or ordinance may challenge the validity of the legislation before he commits the forbidden act and incurs the penalty.

Little v. Smith, 124 Kan. 237, 257 Pac. 959 (1927);
Pathé Exchange, Inc. v. Cobb, 202 App. Div. 450, 195 N. Y. S. 661 (1922), *aff'd*, 236 N. Y. 539, 142 N. E. 274 (1923) (that plaintiff's "news reel" was not subject to censorship);
Erwin Billiard Parlor v. Buckner, 156 Tenn. 278, 300 S. W. 565 (1927);
Utah State Fair Ass'n v. Green, 68 Utah 251, 249 Pac. 1016 (1926) (privileged to conduct horse race without danger of prosecution).

Whether such a suit is "premature" depends upon the nature of the plaintiff's interest in an immediate decision, and this criterion of "legal interest" of the plaintiff is one of the major tests of justiciability in the states and in foreign countries. Justiciability is not conditioned upon prior violence, nor is it necessary, in order to challenge the constitutionality or construction of legislation, first to violate it.

"They are not obliged to take the risk of prosecution, fines and imprisonment and loss of property in order to secure an adjudication of their rights." *Terrace v. Thompson*, 263 U. S. 197, at 216. See also *Pennsylvania v. West Virginia*, 262 U. S. 553, 591, 593. See discussion and cases in 45 Harv. L. Rev. 793, 839 (1932).

The declaratory judgment differs fundamentally from an advisory opinion or a moot case. An issue premature, obsolete, academic, hypothetical, or abstract will not be determined by an action for a declaration of rights.

Williams v. Flood, 124 Kan. 728, 262 Pac. 563 (1928);
In re Cryan's Estate, 301 Pa. 386, 152 Atl. 675 (1930);
Hess v. Country Club Park, 296 Pac. 300 (Cal. App. 1931);
Kelly v. Jackson, 206 Ky. 815, 268 S. W. 539 (1925);
Perry v. City of Elizabethton, 160 Tenn. 102, 22 S. W. (2d) 359 (1929);
Reese v. Adamson, 297 Pa. 13, 146 Atl. 262 (1929);
Fox v. Title and Trust Co., 129 Ore. 530, 277 Pac. 1003 (1929).

In Appendix I, *infra*, p. 33, there are given illustrations of a great variety of actions, such as those concerning marriage, wills, to quiet title, to declare the nullity of instruments and the like, which are essentially declaratory in nature. These illustrations are cited merely to indicate that common law and equity procedure have long been familiar with actions which in reality seek declaratory judgments. The action involves not a matter of jurisdiction, but of procedure only, relating, in fact, only to the prayer for relief.

The nature of the prayer for relief is not the criterion of "cause of action," "case," or "controversy." The prayer for relief is not the criterion of a cause of action, or of a "case" or "controversy." The cause of action is the aggregate of operative facts, including the defendant's conduct, affording ground or occasion to obtain or secure judicial relief of some kind. Under the code form of pleading, followed in thirty jurisdictions, by express statute the prayer for relief does not limit the judgment to be rendered, where the action is defended. It is, therefore, well settled that the prayer for relief is no part of the cause of action.

See *e. g. Marquat v. Marquat*, 12 N. Y. 336 (1855);
Durham v. Rasco, 30 N. M. 16, 227 Pac. 599, 34 A. L. R. 838 (1924);
Cases collected in 31 Cyc. 110 by E. R. Sunderland, and 49 C. J. 173;
American Digest Series, Pleading, sec. 72;
Clark, Code Pleading, 179, 184.

The prayer for relief is designed to afford judicial protection, and a declaratory judgment may afford such relief as ade-

quately as any other form. If a plaintiff finds in a declaration of rights sufficient judicial protection, the interests of the administration of justice have been satisfied. The court may properly demand the presence of the requisites of justiciability, such as jurisdiction, capacity of the parties to sue and be sued, and the employment of authorized forms of procedure; and before rendering judgment, it must be satisfied of the substantive soundness of the complaint, that the subject-matter in issue is capable of legal protection and that the parties have in the issue a definite adverse material legal interest which is conclusively affected by the judgment. When such requisites are found to exist, the resulting judgment is as complete and binding as any other form of judgment, and is so regarded by the various state courts. See also Appendix I, *infra*, p. 33.

POINT III.

In the present case, the highest court of the State of Tennessee, following the procedure which it, in common with other states, has established as regular and proper, has made a final adjudication with reference to a Tennessee tax statute, binding upon all parties so far as the power of the state can make it so, and adjudicating costs against the appellant.

The Tennessee judgment in this case is a final determination in Tennessee of the rights of the complainant railroad and the defendant taxing officials. The Supreme Court of Tennessee, after appropriate pleadings in customary form, has determined and declared that the complainant, contrary to its contentions, is subject to the Tennessee tax Act of 1923, as amended. That is a final adjudication "by such regular proceedings as are established *by law* or custom for the *protection* or enforcement of rights" and satisfies every condition of Mr. Justice Field's celebrated definition of the concept "cases" or "controversies" [*In re Pacific Railway Commission*, 32 Fed. 241, 255 (C. C. N. D. Cal. 1887)]:

> "By cases and controversies are intended the claims of litigants brought before the courts for determination by such regular proceedings as are established by law or custom for the protection or enforcement of rights, or the prevention, redress or punishment of wrongs. Whenever the claim of a party under the constitution, laws or treaties of the United States takes such a form that the judicial power is capable of acting upon it, then it has become a case. The term implies the existence of present or possible adverse parties whose contentions are submitted to the court for adjudication."

The federal constitutional immunities which the complainant pleaded as a ground for the invalidity of the state tax statute in its application to the complainant, were conclusively denied by the Tennessee court, and that is the basis for the present appeal to this Court.

The Tennessee declaratory judgment statute states (section 1) that "such declaration shall have the force and effect of a final judgment or decree." (Tennessee Public Acts 1923, ch. 29.)

An examination of the Tennessee statute also indicates that, like other declaratory judgment statutes, the declaratory judgment may be used as an alternative remedy, that is, alternative to more coercive relief, as in the case at bar.

Experience has shown that a declaration of rights in practically all cases terminates the controversy and that defendants, where placed under duties by the declaration, have not refused compliance with the court's decision. Should that, however, happen, Section 8 provides that "further relief based on a declaratory judgment or decree may be granted whenever necessary or proper." The court, moreover, has a discretion in declining to render the declaration where in its opinion it "would not terminate the uncertainty or controversy giving rise to the proceeding." (Sec. 6.)

An examination of the Tennessee statute would seem to make it clear that it contemplates only an adversary proceeding in an actual case and controversy involving material interests which are definitely affected by a decision, final and *res judicata* in all respects. Some of the statutes seek further

to remove all doubt on this point, created by the now overruled decision in the *Anway* case, by prefixing to Section 1 the clause "in cases of actual controversy." The prefix was unnecessary, for acquaintance with the statutes and their origin in England indicates that an action for a declaration cannot possibly lie in any other case than one involving a controversy in its most traditional sense.

POINT IV.

A decision by this Court that the judgment of the Supreme Court of Tennessee is not subject to appeal, with the effect of rendering doubtful if not of nullifying an established procedure of a state court, is a control of state court procedure which this Court should not assume except under the compulsion of an overriding federal law.

The question at issue appears in form as one calling for an adjudication by this Court on its appellate jurisdiction under the Federal Constitution. The form should not, however, serve to conceal the important substantive problems which are immediately in the background. If by the words of the Constitution or by its implicit meaning as expounded by adjudications of this Court there is a clear answer to the question, we should have no reason for going further, however unfortunate the consequences. There is actually not such an answer. (See Point V, *infra*, p. 20.) As bearing upon the proper interpretation of the constitutional provision, therefore, we think it most important to consider what would be the meaning of the answers which this Court may make.

An answer that the Tennessee judgment is subject to appeal will permit the adjudication of the important constitutional and other questions upon which the parties are at issue. It will also mean that this Court will not deny to a declaratory judgment which adjudicates an actual dispute that finality which is guaranteed it by the state court. But it will not guarantee the finality of all declaratory judgments, nor fore-

close consideration of the existence of the requisites of justiciability in other cases as they arise. It will also leave open for future adjudication if and as the question may arise, the validity of an attempted grant by the Congress of jurisdiction to the federal district courts to render declaratory judgments.

A contrary answer will, of course, postpone to some other proceeding an adjudication by this Court of the ripened dispute existing between these parties. In addition, it will have the most important consequences, not all of which can be foreseen at the present time, upon the practice and procedure of the thirty-two states and territories concerned, and upon others which may adopt the declaratory judgment in the future. In the event of a contrary answer, a plaintiff could apparently prevent removal to a federal court or prevent federal review by suing in a state court for a declaratory judgment. See 100 Central Law Journal 95 (1927).

It is clear also that in these jurisdictions a judgment involving a federal question, which is *res judicata* and binding upon the parties so far as all the agencies of the state are concerned, will be of undetermined validity and scope with respect to the federal government. Perhaps it is a nullity, in which event very real conflicts of jurisdiction and power between the two sovereignties are quite possible if not probable. Or it may be, as in form it appears to be, merely a refusal by this Court to consider the appeal, with the judgment then binding upon all concerned. In either case it seems possible for a state court to make a judgment *against a federal right* which will stand unchallenged. Thus, the issue set at rest by *Martin v. Hunter's Lessee*, 1 Wheat. 304 (1816), that a state court cannot interpose its judgment against that of this Court on a question of federal right (there of title under a treaty with a foreign country), may be revived.

On the other hand, it does not seem possible that the declaratory judgment can be without some effect in federal tribunals, for vested rights will be affirmed by such judgments and action taken thereon by the parties, or by the courts by way of later coercive relief based upon the judgments. Rights thus affirmed or acquired cannot be disaffirmed and set at

naught but will be subject to protection by the courts. Whether rights have been thus acquired, and their extent, will probably have to be determined in individual cases by adjudications, at least some of which will be subject to review by this Court under the Fourteenth Amendment or otherwise. The jurisdiction thus declined in the present instance may ultimately be obtained under situations less direct than this, as well as more costly in delay and uncertainty to the parties. Moreover, cases excluded from this Court as declaratory judgments in state courts may find their way into the federal district courts as actions for coercive relief involving federal questions.

These dilemmas and complications seem to us real ones and not unnatural results of a decision which, without directly holding that the state procedure is invalid, indirectly does so hold. Of course it is to be anticipated that in some form or other the federal construction of the declaratory judgment procedure will be persuasive if not prevailing. So great is now the power and prestige of the federal authority and of this Court that if the controversy of *Martin v. Hunter's Lessee* appears to be revived at all, it will be settled without question, and settled as it was before. How this can be done without friction is not so clear. A natural consequence will be a hesitation on the part of litigants and a reluctance on the part of state courts to adopt a procedure which may be called in question by this Court. It seems inevitable that an adverse decision by this Court will check what to date has been a rapid spread of a procedural reform. The commanding position of this Court may indeed lead the states or their courts to discard the use of a remedy as to the validity and efficacy of which in state court procedure, legislatures and courts (except for the early Michigan case now overruled) as well as commentators have been unanimously agreed (see Appendix III). The responsibility of this Court is great, both for the immediate and the more remote consequences of its decisions. Here is a situation where an adverse decision will affect and probably change the local procedure of many states. In the exercise of wise statesmanship the Court may properly shrink from accepting such responsibility.

POINT V.

There is no constitutional provision or adjudication of this Court requiring a decision that the state court judgment here in question is not subject to appeal; the contrary holding is more consistent with the due regard had by this Court for the sovereign powers of the states.

In several cases this Court has had occasion to refer to the declaratory judgment procedure. In none of them was the present question at issue.

In *Liberty Warehouse Co. v. Grannis*, 273 U. S. 70, and in *Willing v. Chicago Auditorium Asso.*, 277 U. S. 274, the Court held that the United States District Courts could not give a declaratory judgment. No question as to the power of a state court to give a declaratory judgment was in issue. In those cases, moreover, this Court took the position that the facts of those cases presented no contested issue. The question as to the validity of a grant of power by Congress to the federal district courts to render declaratory judgments, is quite different from the one presented in this case. Regardless of the attitude of this Court towards the power in Congress to authorize this procedure for the federal courts, it may yet properly be unwilling to interfere with such an authorization by a state to its courts.

Liberty Warehouse Co. v. Burley Tobacco Growers, 276 U. S. 71 (1928), decided important questions concerning the law of co-operative marketing. It also considered a point of practice with reference to the Kentucky declaratory judgment law. Defendant had presented an amended answer and counterclaim in three sections, in the last of which it asked for a declaratory judgment. The trial court struck section three "from the records" and this action was affirmed by the Court of Appeals of the State of Kentucky. This Court said (p. 88):

> "No Federal right was impaired by striking section three from the amended answer and counterclaim. Proceedings in state courts must conform to the reasonable requirements of local law. Whether they do is primarily

for those courts to determine. Here we find no abuse of that power."

It is submitted that this is a concise and accurate statement of the attitude of this Court, consistently maintained, toward the regulation of local procedure.

The Court also suggests that the Kentucky statute apparently authorizes plaintiffs only to ask for such judgments. It also refers to the provisions of that act (which are quite usual, see pp. 11, 16 *supra*) giving the court discretion to refuse the declaration in cases where the decision would not terminate the uncertainty and the controversy, or the declaration is not necessary and proper at the time under all the circumstances.

The Court ended its discussion of this matter by the following statement at the close of the paragraph dealing with the power of the Kentucky court as to such judgments in counterclaims and its discretion to refuse the declaration: "This Court has no jurisdiction to review a mere declaratory judgment," citing the *Grannis* case, *supra*. The Court could not have intended by this brief statement to pass upon the present issue, which was not involved and which was not briefed by counsel, or to foreclose an examination in the light of the exact problem and the consequences of the decision as presented in this case.

These cases, therefore, do not decide the present issue.

Article III, section 2, of the Federal Constitution, under which the issue arises, contains an enumeration of the grant of federal jurisdiction, listing different classes of "cases" or "controversies" within such jurisdiction. Construed as granting only the jurisdiction expressly stated, this provision has been held limited in application to "cases" or "controversies." Even so construed, it cannot be considered as intended to exclude all the innumerable new forms of proceedings which have been developed as a part of the modern administration of justice. For example, this Court has recently held that the review of a decision of the Board of Tax Appeals did present a "case" or "controversy" under Article

III of the Constitution. *Old Colony Trust Co. v. Commissioner of Internal Revenue*, 279 U. S. 716.

The opinion in that case cites *Muskrat v. United States*, 219 U. S. 346, 356, and quotes again the requirements stated by Mr. Justice Field, in *In re Pacific Railway Commission*, 32 Fed. 241, 255 (1887):

> "Whenever the claim of a party under the Constitution, laws or treaties of the United States takes such a form that the judicial power is capable of acting upon it, then it has become a case. The term implies the existence of present or possible adverse parties whose contentions are submitted to the court for adjudication."

The record here shows how completely the present action fulfills these requirements. Here are parties adverse to each other whose contentions concerning the Constitution of the United States are submitted to the court for adjudication in the most thorough fashion. It shows, too, the difference between the judgment here rendered, which is binding upon the parties at issue, and the advisory opinion of the *Muskrat* case, the vice of which was that it did not and would not conclude private litigants. The distinction between the advisory opinion of the *Muskrat* case and the declaratory judgment was stated by Mr. Chief Justice Hughes in 1920 as reported in 45 A. B. A. Rep. 266, 91 Cent. L. J. 435, and 53 Chicago Legal News 205 (1921).

Further support of these views may be found in

(1) the persuasive force of the various state court decisions listed pp. 8, 9 *supra* upholding the validity of the declaratory judgment procedure under the provisions of state constitutions;

(2) the reluctance of this Court, as stated in Point I of this brief, which is reaffirmed in *Liberty Warehouse Co. v. Burley Tobacco Growers*, 276 U. S. 71 (1928), as quoted on p. 20 *supra*, to attempt to control matters of state court procedure;

(3) the various cases where this Court has affirmed or rendered judgments declaratory in form and effect.

The last point here noted seems to us very important. We have already pointed out the narrowness of the question here involved. The Tennessee decree in question adjudicates the disputed issue, gives judgment for the defendants, and awards them execution for the costs of the action. Had the prayer for general relief contained also, or been construed to contain, a claim for an injunction, all other proceeding in the case including the judgment might have remained as they now are and yet the finality and reviewability of the judgment would not have been subject to question.

In the decisions of this Court cited immediately below we recognize the possibility of technical grounds of distinction from the case at bar. Yet we submit that the difference is only one of the barest and slightest character. In essentials the actions here referred to are declaratory in nature. It is true that they have the force of either legal tradition or of statute behind them; but the latter at least, if not the former, the declaratory judgment procedure now has.

Thus, the Court itself has made "binding declarations of right" without further relief, in a considerable number of cases. A common example is the decision determining the location of a disputed but existing boundary in suits between states.

> *Louisiana v. Mississippi,* 202 U. S. 1;
> *Arkansas v. Tennessee,* 246 U. S. 158;
> *Georgia v. South Carolina,* 257 U. S. 516;
> *Oklahoma v. Texas,* 272 U. S. 21 ("original suit brought by Oklahoma against Texas, to establish their boundary on the Red River").

In *La Abra Silver Mining Co. v. United States,* 175 U. S. 423, an action was brought by the United States, under statutory authority, for a judicial declaration that an award made by the Mexican-American Arbitral Tribunal in favor of La Abra Company, an American corporation, had been obtained by fraud. No consequential relief was asked, and necessarily none could be given, for the money awarded was in the hands of the Secretary of State awaiting distribution. In *United States v. Jones,* 119 U. S. 477, the appellate jurisdiction of the court was held to extend to a judgment of the Court of

Claims, which was no longer subject to revision by the Secretary of the Treasury, but was final on the merits, although necessarily the court had no power to enforce its decision by writ of execution. In *Gaines v. Fuentes*, 92 U. S. 10, a suit was brought to declare void a certain will, as well as to set aside the decree admitting it to probate. In *Smith v. Adams*, 130 U. S. 167, a proceeding was brought in the territorial court of Dakota to pass upon an election for and to declare the location of a county seat. In *Sharon v. Tucker*, 144 U. S. 533, the court sustained a bill to declare valid the title of a holder of real estate by adverse possession against a record holder whose title had become unenforceable by the running of the statute of limitations. In *Fidelity National Bank & Trust Co. v. Swope*, 274 U. S. 123, this Court held *res judicata* a prior action in the state court by the holder of certificates constituting a lien for public improvements to have the certificates and the statutory proceedings for the improvements declared valid. All these cases were deemed to constitute cases and controversies in a constitutional sense.

In Appendix IV, *infra*, p. 46, there are collected a large number of examples from recent cases in this Court of judgments which are in effect declaratory.

Proceedings may be brought for an injunction, the purpose of which is to bring an issue of law before the court for determination; yet actually in many of these cases an imminent and irremediable injury is not perceptible. The injunction merely affords a vehicle of submission, but the judgment desired and rendered is in many cases declaratory only. Cf. *Williams v. Riley*, 280 U. S. 78, 79.

A brief survey of recent Supreme Court reports indicates that the common form for praying immunity from the requirements of a statute, ordinance, or administrative order is to request that the official action be declared invalid, *and* that an injunction against its execution or enforcement be issued. The principal goal is the declaration of invalidity; the injunction is ancillary or incidental and generally is not needed. Justiciability lies in the respective assertion and denial of invalidity (or validity), and is not created by the appended request for an injunction. A large number of re-

cent cases of this type are collected in Appendix V, *infra*, p. 48.

We submit, therefore, that both by theory and by practice the Tennessee judgment in this case should be held subject to review in this Court.

POINT VI.

Irrespective of any conflict between state and federal authority in this case, the procedure of courts, which is not an end in itself but only a means to the end of accomplishing justice, should be subject to modification and improvement as the need may appear and, in the absence of express provision, it should not be held controlled by the rigid and practically unchangeable limitations of a written constitution.

Flexibility in procedure is an element now considered essential in law administration. Hence it is a universally accepted tenet of procedural reform that control of procedural rules shall be placed where they can be adjusted most readily to the needs of law administration as they appear. The rules of the contest are not an end in themselves but only a means to an end and they should be shaped and reshaped to secure that end most effectively. The idea has been well phrased by an able English judge, Collins, M. R., in *In re Coles*, [1907] 1 K. B. 1, 4, that "the relation of rules of practice to the work of justice is intended to be that of handmaid rather than mistress."

The modern movement which best epitomizes this idea is that for rule-making power in the courts. It is proposed that the legislature shall prescribe the broad outlines of practice and leave to the courts the development and amendment of detailed rules. Such is the practice followed with success in England (see Rosenbaum, The Rule-Making Authority in the English Supreme Court, 1917); and the literature in support of similar proposals for this country is most extensive. For bibliographies of the subject see

16 Am. Bar. Ass'n Jour. 199-202 (1930);
73 Annals Am. Acad. of Pol. & Soc. Science, 68-77 (1917);
12 Am. Bar. Asso. Jour. Supp., March, 1927;
Rep. on Judicial Councils, Com. on Jud. Adm. of the Merchants' Ass'n of New York (1931) 95-123;
Clark, Code Pleading (1928) 32.
Compare particularly statements of Roscoe Pound in 10 Ill. L. Rev. 163, 170, 177, and William H. Taft in 18 Yale L. J. 28, 32, 72 Cent. L. J. 191.

There is a standing committee on the subject of the Conference of Bar Association Delegates of the American Bar Association. Statutes conferring broad rule-making power upon the courts exist in several states, as in Delaware (1925), Florida (1929), Rhode Island (1930), Virginia (1928), Washington (1925), and Wisconsin (1929). Such statutes have been upheld as constitutional in *State ex rel. Foster-Wyman Lumber Co. v. Superior Court*, 148 Wash. 1, 267 Pac. 770 (1928), and *In re Constitutionality of Section 251:18, Wisconsin Statutes*, 204 Wis. 501, 236 N. W. 716 (1931).

It has been considered that even this power does not alone secure sufficient flexibility and response to public needs, but that there should be an additional body such as the judicial council or a "ministry of justice" to stimulate the exercise of the power.

Compare E. R. Sunderland, *The Machinery of Procedural Reform*, 22 Mich. L. Rev. 293 (1924);
also 35 W. Va. L. Q. 301 (1929), 39 Harv. L. Rev. 725 (1926);
Mr. Justice Cardozo, *A Ministry of Justice*, 35 Harv. L. Rev. 113 (1921), reprinted in Law and Literature (1930);
T. W. Arnold, *Judicial Councils*, 35 W. Va. L. Q. 193 (1929);
Bibliography on Judicial Councils, 24 Law Library Journal 25, 65 (1931).

The control of procedure by the unbending provisions of a written constitution is directly contrary to this movement.

It would mean as a practical matter that law administration cannot be adapted to the needs of justice as they appear from time to time but that the rules embedded in the constitutional provisions become themselves ends which must be honored at the expense of all else. The declaratory judgment procedure well illustrates the point. This reform concerns particularly the method of getting issues decided judicially and is not an end in itself. The end desired in these cases is an adjudication of important rights at issue between parties litigant. We have shown how in many different types of cases such an adjudication can be obtained if some slight additional prayer is joined with the prayer for the declaration. The declaration, however, remains the important thing desired. To erect this slight and technical difference into a constitutional dogma is at variance with the modern attitude towards procedure. It should not be done in the absence of a clear direction in the Constitution.

Experimentation by the several states with a view to improvement of law administration is fully as important as experimentation with new types of substantive legislation.

In many of the cases where the declaratory judgment procedure is now being used, the parties probably could avoid the issue now raised by asking for coercive relief also. Thus, a technical barrier is interposed to prevent a declaration of rights; this can often be overcome by technical devices of avoidance. But we submit that even so, the Constitution should not be construed to provide such barriers. At times it will be impossible to evade them. Where it is possible to do so, there are sound reasons why both parties and court may prefer the declaratory judgment. The parties may often properly hesitate to take the decisive, incriminating, and irretrievable step necessary to place themselves in a position to seek coercive relief. Thus, they may be unwilling to disregard a contract about the provisions of which they are in doubt and dispute; or they may desire to refrain from flouting a statute defining a criminal offense when its meaning and validity are not settled. It seems unnecessary if not undignified for a sovereign authority to force its constituents

to such steps in order to secure an adjudication of their rights, and a court may well feel reluctant to do so.

As already observed, a usual and popular use of the procedure is in connection with a claim for other relief. A party seeking coercive relief will also add a prayer for a declaration of rights. Here too the motive is obvious and reasonable. A decision on the issue as to the coercive relief alone may not settle the entire case, either because such relief is not available for technical reasons in the particular case or because the granting of such relief does not involve all the issues in dispute. With the added prayer for a declaration in the complaint the court may adjudicate the entire matter at issue between the parties in such a way that neither it nor the parties themselves are forced to the time, trouble, and expense of further litigation. Such use of the declaratory judgment is quite usual in New York, for example. Recent instances are

Baumann v. Baumann, 250 N. Y. 382, 165 N. E. 819 (1929);
Evangelical Lutheran Church of the Ascension, of Snyder, N. Y. v. Sahlem, 254 N. Y. 161, 172 N. E. 455 (1930);
Gwynne v. Bd. of Educ'n of Union Free School Dist., 259 N. Y. 191, 181 N. E. 353 (1932);
Colson v. Pelgram, 259 N. Y. 370, 182 N. E. 19 (1932).

See also the following cases where an injunction was denied but the declaration made and the rights of the parties determined.

Erwin Billiard Parlor v. Buckner, 156 Tenn. 278, 300 S. W. 565 (1927);
Evans v. Manchester, Sheffield & Lincolnshire Ry., 36 Ch. D. 626 (1887);
London Ass'n of Shipowners v. London & India Docks, [1892] 3 Ch. 242;
Attorney-General v. Merthyr Tydfil Union, [1900] 1 Ch. 516;
Deep Creek Gold Dredging Co. v. Gympic Quartz Crushing Battery Co., 8 Queensland L. J. 131 (1897);

The desirability of the general use of the declaratory judgment, subject, of course, to its inherent restriction to cases of actual disputes, has, so far as we can discover, been supported by every commentator, except one. An editorial note in 45 Harv. L. Rev. 1089 (1932), while approving of its use in matters of private litigation, as has that Review consistently in all other comments upon it, raises the question as to its utility for the presentation of federal constitutional questions of moment. The fear is expressed that the questions may not be thoroughly presented through this procedure. Even the limited restriction on its use thus suggested we believe is not supported by any realistic conception of the situation. We yield to no one in believing that constitutional questions should be adequately presented to this Court. Nevertheless, the situation should be viewed in a practical and not in a doctrinaire way. The care and thought with which constitutional questions may be presented to this Court will vary with the individual case and will depend more on the industry and ability of counsel than on any other single factor. It will depend very little on the form of the procedure. The present case indicates how a clear constitutional issue may be brought before the Court and ably presented by counsel. On the other hand, there is no guaranty that an adjudication requested with injunctive relief as ancillary thereto will result in a more complete or in a different presentation. Moreover, the court is fully competent to protect itself. We have cited many cases showing that the courts do exercise full discretion in refusing a declaration when the controversy is not ripe for it. And when the case is not thoroughly argued, the court is entitled to order a more thorough preparation of briefs and argument.

It should be noted also that the *Harvard* comment is directed against a federal declaratory judgment bill—not against this case. The fear is expressed of inadequate factual experience of statutes when issues involving their validity are presented to federal courts under Congressional authority. Such fear does not justify this Court's refusal to review such judgments

of state courts when as and if it is satisfied that a real controversy was decided.[1]

The fashioning of an issue for the purpose of providing a test case in important and famous constitutional cases is well known. Examples are

Hylton v. U. S., 3 Dall. 171, 172 (1796) ("the defendant, by agreement of the parties, confessed judgment, as a foundation for the present writ of error; which (as well as the original proceeding) was brought merely to try the constitutionality of the tax");

Pollock v. Farmers' Loan & Trust Co., 157 U. S. 429, 15 Sup. Ct. 673, 158 U. S. 601, 15 Sup. Ct. 912 (1895) (suit by a stockholder to prevent payment of the income tax in question by the corporation);

Adkins v. Children's Hospital, 261 U. S. 525, 43 Sup. Ct. 394 (1923) (one of the two suits was by an employee to prevent the minimum wage board from establishing a minimum wage affecting her);

O'Gorman & Young, Inc. v. Hartford Ins. Co., 282 U. S. 251, 51 Sup. Ct. 130 (1931) (suit by agents against the insurance companies to recover commission in excess of those permitted by the statute in question).

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[1]The writer in 45 Harv. L. Rev. 1089 also suggests that the Court should have the opportunity of itself advancing the point at which it will determine the issue and that "the use of injunctive relief permits an easy advancement or retraction by the Court which the declaratory judgment may not allow." Whatever may be thought of this conception of the way in which constitutional issues should be treated by this Court, the actual suggestion completely confuses the scope of the two remedies. The award of injunctive relief is governed by well crystallized equitable principles; the grant of a declaratory judgment is subject to a far wider judicial discretion.

He also suggests that the Court should have the benefit of experience under legislation in passing on its constitutionality. Whether this, if obtainable, would outweigh the disadvantages of continued uncertainty until the constitutional issue is settled might be subject to question; but in any event we believe it a forlorn hope. It takes years before experience as to social legislation can possess significance. Note the twenty years between *Noble State Bank v. Haskell*, 219 U. S. 104 (1911), and *Abie State Bank v. Weaver*, 51 Sup. Ct. 252 (1931). And such experience will not be made available by any such mechanical expedient as requiring a declaration only with coercive relief instead of a declaration alone.

In such cases there is a very grave danger of a lack of a real adversary interest, and with no recognized way of guarding against it such as the declaratory judgment procedure possesses in the power to refuse to make the adjudication. (See 41 Yale L. J. 262, 266.) Judging by the cases decided under declaratory judgment statutes, such judgments might well have been refused in cases such as *Hylton, Pollock, Adkins,* and *O'Gorman,* for lack of a genuine, adverse interest in the defendant.

We submit, therefore, that this simple and effective procedural reform involving a reasonable variation and extension of present practice should be permitted in those states where its use is desired and in those cases where it has achieved its purpose of adjudicating a real issue. It should not be subject to the handicap of a constitutional amendment for its validity.

POINT VII.

The judgment of the Supreme Court of Tennessee in this particular action decides an actual controversy, is final, and is therefore, subject to appeal.

The only basis upon which this Court may proceed in raising any question as to its jurisdiction to review this case is that an actual controversy was not determined in this particular litigation. We submit that both legally and practically there is no question but that an actual bona fide dispute was here carried through to its final adjudication so far as the state court was concerned. Whether the declaratory judgment usually or always will lead to this result or what may be its effect in other cases is not here in issue. This case *did* reach the result of an adjudication of a controversy. Right to a review is a necessary consequence.

Should this Court deny review to this case despite the existence of a real dispute with adverse parties, a real danger arises that its jurisdiction will depend on a question of nomenclature only. That this action is brought under a

statute which calls the judgment declaratory should not prevent this Court from examining it to see whether a controversy is actually presented. Whatever a state may call its judgment, that examination is always open here. Approval of the procedure in this case will not commit this Court to approval of all cases brought to judgment in state courts under these statutes. And the Court has at hand means to enforce its requirements as to cases and controversies in each individual case without a general invalidation of the procedure as a whole.

We submit therefore that this judgment, deciding as it does an actual controversy, is final and subject to appeal.

Respectfully submitted,

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CHARLES E. CLARK
Amici Curiae

APPENDIX I.

The Use of the Declaratory Judgment.

History. The action for a declaratory judgment is an ancient procedure, having been in use in the Middle Ages throughout all Europe.

> 28 Yale Law Journal 10 *et seq.;*
> Weismann, J. Die Feststellungsklage (Bonn, 1879).

It has been actively employed in Scotland as the "action of declarator" since the sixteenth century. The tribute paid to this form of action by Lord Brougham over many years and again in 1846, in delivering an opinion in the House of Lords in the case of *Earl of Mansfield v. Stewart*, 5 Bell 139, 160, led to its formal introduction in England by statute in 1852. It was, however, at first narrowly construed. The social and legal advantages of the simplified procedure in question led in 1883 to the adoption by the English Supreme Court of a Rule of Court greatly extending the scope of this procedure. (See 28 Yale L. J. 1, 25 *et seq.*) The Rule of 1883 reads:

> "No action or proceeding shall be open to objection, on the ground that a merely declaratory judgment is sought thereby, and the Court may make binding declarations of right whether any consequential relief is or could be claimed, or not."

The growing popularity of the procedure in England is attested by the fact that by page-to-page statistical count, approximately two-thirds of the cases reported in the Chancery Reports since 1918 have come up on an originating summons for a declaration of rights. Every one of them has involved a "case" and "controversy."

The action for a declaratory judgment is not an innovation in procedure. The action for a declaration of rights is by no means an innovation in procedure. From time immemorial, courts of the common law have rendered judgments determining the then existing rights of the parties, final judgments which are incapable of execution—such as the determination

of status or title—and the execution of which is undesired and unnecessary. All that is new or modern about the declaratory judgment is the name—the process itself is as ancient as the administration of justice by courts. Its formal adoption by legislation in the nineteenth and twentieth centuries merely evidences general recognition of its value in the complicated conditions of modern life which create increasing necessity for certainty, stability, and settlement.

In the field of status, the following actions are purely declaratory: actions for the declaration of the nullity of void marriages, of the validity of marriages, and for the formal establishment of family relationships, such as heirship; in the field of property, we have the equitable action to declare the non-existence of a cloud on title, the action by the person in adverse possession against the record holder to have the latter's title declared void and his own valid, the actions under the Torrens system for the determination of title, the actions for the location of boundary lines, rights of way or easements, and the existence of liens and claims to priority in bankruptcy and in corporate distributions; also the action by which an equitable claimant seeks a declaration that the defendant's property is impressed with a trust in his favor, or an action to declare a supposed trust invalid. In the field of written instruments, courts have long construed wills. Actions to declare the nullity of instruments, such as deeds, life insurance policies, conveyances in fraud of creditors, are nothing but declaratory; so are actions proving the tenor of lost or spoliated instruments or proving the validity, when contested, of instruments to be recorded. The proceedings authorized in western states by which commissioners of irrigation districts may bring actions for a judicial determination that the district is lawfully established and that the bonds issued are valid, are declaratory only; as this Court has said, in a bond validation case (*Fidelity Nat. Bank & Trust Co. v. Swope*, 274 U. S. 123, 131): "[The issues] cannot be any the less [a case or controversy] because through a modified procedure the parties are reversed and the same issues are raised and finally determined at the behest of the city." The equitable bill of interpleader brought by a stakeholder exemplifies a

common employment of an action looking to a declaratory judgment. The statutory action to limit liability in admiralty also seeks only a declaratory judgment.

Utility of the declaratory judgment in suits contesting the validity of administrative action. The action for a declaration is especially useful in actions against the administration, in which the citizen maintains that a statute or ordinance or administrative regulation violates his rights. With the ever-growing interference by government in the affairs of private individuals, it often becomes important to the individual to challenge the validity of the interference, authorized or actual, before it is physically enforced upon him. Statute, ordinance, or administrative regulation, with or without penalties for disobedience, may seriously impair individual freedom and material interests. In both England and the United States, where the remedy of injunction is subject to conditions and limitations of various kinds, the declaratory judgment has become a convenient method of testing the propriety, validity, or constitutionality of administrative action under statute or ordinance. As a rule, the mere enactment of a statute or ordinance imposing restraints on an individual and implying enforcement by prosecuting officials threatens and hampers the plaintiff's freedom, security, or material interests, and creates that justiciability of the issue which sustains a proceeding for an injunction and, *a fortiori*, for a declaratory judgment.

But even where a definite demand or threat by the defendant official is necessary to create justiciability, it is not to be supposed that a government official, the legality of whose act is challenged, requires more than a decision of a competent court on the disputed question of law, and that injunction to restrain or mandamus to command him is anything more than a mere formality. The decision, not the coercive order, settles the dispute. It seems anomalous that it should be deemed necessary for one branch of the government, the judiciary, forcibly to restrain or punish another branch or instrumentality of the government, in order to achieve respect for the declared law.

Hughes, C. J., in *Stratton v. St. Louis S. W. Ry.*, 282 U. S. 10, 18: "It is not necessary, however, that formal application should be made for such a writ [mandamus], as the District Judge may now proceed to take the action which the writ, if issued, would require."

So the German Supreme Court: "In the case of the State as defendant the distinction between a declaratory and an executory action is merely a formal one." R. G. Z., March 30, 1931, Jur. Wochenschr. v. 60, at 2483; R. G. Z., May 18, 1931, *ibid.* at 3263.

The simplest way is the best way to bring to judicial determination the challenged validity of governmental action allegedly violating individual rights; and experience has shown that the declaratory judgment serves that purpose admirably.

Cf. W. Ivor Jennings, *Declaratory Judgments against Public Authorities in England*, 41 Yale L. J. 407 (1932);

Ruislip-Northwood U. D. Council v. Lee, 145 L. T. 208 (K. B. 1931);

Judicial Relief for Peril and Insecurity, 45 Harv. L. Rev. 793, at 839 *et seq.* (1932).

Immunity from taxation.

Freedom from any governmental requirement which is believed unlawfully to impair the privileges of the individual may likewise be judicially demanded in the form of a suit for a declaration of immunity. The plaintiff thus puts to the test a governmental action which threatens him with restrictions and often with a criminal prosecution. Among such actions is the claim of immunity from the requirement of a license or fee as a condition of doing business.

Another common claim of immunity is the immunity from taxation. It is often difficult to challenge the validity of a tax by injunction, and it is hazardous to invite a levy or await enforcement proceedings, with possible penalties. A practice has therefore developed of challenging the validity of a tax law or of an assessment thereunder by an action for a declar-

ation, a speedy method of determination which does not materially hamper the taxing power and which insures an authoritative determination on the propriety of the proposed exaction before it has been enforced. This proceeding may take the form of an attack upon the constitutionality or validity of the law,

Frazier v. City of Chattanooga, 156 Tenn. 346, 1 S. W. (2d) 786 (1928) (claim that law permitting assessment on property owners for improvements was repealed; denied);
Universal Film Mfg. Co. (Australia) *v. New South Wales*, 40 C. L. R. 333 (1927);
Mason v. City of Victoria, 26 Br. Col. 418 (1917).

or upon the validity of the assessment thereunder;

Wilcox v. Town of Madison, 106 Conn. 223, 137 Atl. 742 (1927) (assessment claimed out of proportion to real value of property and that classification wrong. Denied. *Certiorari* denied, 276 U. S. 606);
Soergel, Jahrbuch d. Verwaltungsr. II, 499 (Baden, March 23, 1909) (plaintiff could seek declaration against preliminary order on rate of assessment, without waiting for determination of taxable *res* [working capital]).

or the taxpayer may contend that he

Parmer v. Lindsey, 157 Tenn. 29, 3 S. W. (2d) 657 (1928) (plaintiffs claim immunity from privilege tax, not being "general contractors");
Nash Sales, Inc. v. City of Milwaukee, 198 Wis. 281, 224 N. W. 126 (1929) (interstate motor companies shipping in original packages claim exemption from state tax);
Vaughn v. Attorney-General for Alberta, 20 Alberta 424 (1924) (that plaintiff's deceased husband held vendor's deed in escrow only, hence not owner, and exempt).

or his property

City of Louisville v. Cromwell, State Treas., 233 Ky. 828, 27 S. W. (2d) 377 (1930) (city claims ex-

emption on gasoline to be used in city vehicles);
Peoples Tel. Corp. v. City of Butler, 99 Pa. Super. Ct. 256 (1930) (that lot and building necessary for plaintiff's business, hence tax exempt);
Automatic Totalisators Ltd. v. Federal Comm. of Taxation, 27 C. L. R. 513 (1920) (dividends not cash prize in lottery, hence exempt);
Macrae Mining Co. Ltd. v. Township of Bucke, 58 Ont. L. R. 453 (1926) (that mining rights not merged with sold surface rights, hence exempt from tax on sale)

is exempt from taxation, or that the amount of the tax is unduly high or the classification improper.

Cupp Grocery Co. v. Johnstown, 288 Pa. 43, 135 Atl. 610 (1927) (plaintiff owner of 33 stores claims liability to only one license tax of $100 as a corporation, not $915 as assessed);
Incorporated Council of Law Reporting v. Federal Comm. of Taxation, 34 C. L. R. 580 (1924) (whether plaintiff liable as a person or corporation).

APPENDIX II.

Declaratory Judgments Approved — Selected Cases.

I. American Cases.

Braman v. Babcock, 98 Conn. 549, 120 Atl. 150 (1923).

Brown v. Levin, 295 Pa. 530, 145 Atl. 593 (1929) (Plaintiff sought a declaration construing a restriction regulating the building line. At p. 534, the court referred to the declaratory judgment procedure "as the most inexpensive and expeditious method of adjusting the dispute.")

Chick v. MacBain, 157 Va. 60, 160 S. E. 214 (1931) (Plaintiff landlord sought declaration as to the amount of rent due under a lease provision on renewal which had been exercised. Campbell, J., remarked, at p. 66: "The fact that a plaintiff or complainant might, by the institution of an action or suit or series of actions or suits, eventually, through protracted and continuous litigation, have determined the same questions that may be determined once and for all in a declaratory judgment proceeding, has never, so far as we find, been held by the courts to deprive the court of jurisdiction to enter a declaratory judgment wherein the entire rights of the parties can be determined and settled once and for all.")

Colorado & Utah Coal Co. v. Walter, 75 Colo. 489, 226 Pac. 864 (1924).

Craig, City Comptroller, v, Commissioners of Sinking Fund of City of New York, 208 App. D. 412, 203 N. Y. S. 236 (1924) (Plaintiff sought a declaration as to the validity of a resolution for the sale of property in which he had not concurred. The court remarked, at p. 418: "It would be difficult to find a more appropriate case for the application of the law permitting declaratory judgments.")

Dodge v. Campbell, 128 Misc. 778, 220 N. Y. S. 262 (1927).

Evangelical Lutheran Church of the Ascension, of Snyder, N. Y. v. Sahlem, 254 N. Y. 161, 172 N. E. 455 (1930).

Faulkner v. City of Keene, 85 N. H. 147, 155 Atl. 195 (1931).

Girard Trust Co. v. Tremblay Motor Co., 291 Pa. 507, 140 Atl. 506 (1928) (Plaintiff lessor sought a declaration construing a lease in view of plaintiff's offer, and defendant lessee's refusal, of a new building of given qualifications after destruction of the original building by fire.

At p. 524, the court remarked: "In a case like the present, by proceeding according to the Declaratory Judgments Act, the parties avoid the necessity of first actually erecting a building in order to be in a position to obtain a judicial construction of their respective rights and liabilities.")

Hess v. Country Club Park, 213 Cal. 613, 2 Pac. (2d) 782 (1931) (Plaintiff property owner sought a declaration as to the validity of a building restriction. At p. 616, the court remarked: "The pleadings in this case present a practical situation which calls for declaratory relief .... It is inconceivable that he must run the risk of forfeiting any further investment, or even his title to the land, in order to obtain an adjudication of his rights. It seems clear that the declaratory relief statute was intended to relieve a party from exactly such a dilemma.")

Pacific States Corp. v. Pan-American Bank of California, 213 Cal. 58, 1 Pac. (2d) 4 (1931).

Post v. Metropolitan Casualty Ins. Co., 227 App. D. 156, 237 N. Y. S. 64 (1929) (Plaintiff creditor under judgments sought declaration defining rights under insurance policy in view of the insolvency of railroad company, which defendant insurance company had insured. Crosby, J., said, at p. 158: "It would be difficult to think of a situation wherein the purpose behind section 473 of the Civil Practice Act could find better vindication than the very situation we have here.")

Sheldon v. Powell, 99 Fla. 782, 128 So. 258 (1930).

Sigal v. Wise, 114 Conn. 297, 158 Atl. 891 (1932).

State ex rel. Enright v. Kansas City, 110 Kan. 603, 204 Pac. 690 (1922) (Plaintiff sought a declaration as to the right of defendant city to issue bonds for more than 5% without reserving the privilege of repaying within five years, in view of certain statutes. At pp. 605-6, the court remarked: "The proceedings in this case serve to illustrate operation of the declaratory judgment act.")

Tennessee Eastern Electric Co. v. Hannah, 157 Tenn. 582, 12 S. W. (2d) 372 (1928).

II. Foreign Cases in English-speaking Jurisdictions.

Burghes v. Attorney-General, [1911] 2 Ch. 139 (Plaintiff claimed a declaration that a tax form issued by admin-

istrative officers was ultra vires and that he was under no duty to comply with it. Warrington, J., remarked, at p. 156: "In my opinion, the mode adopted by the plaintiff for obtaining a decision is a very convenient one, enabling the Commissioners to be informed how far they may go, and relieving the plaintiff from the doubt and perplexities into which he has been cast.")

Dyson v. Attorney-General, (*C. A.*) [1912] 1 Ch. 158 (Plaintiff sought a declaration that an administrative tax notice was invalid and that he was under no duty to comply with it. Cozens-Hardy, M. R., remarked, at p. 168: "Assuming the jurisdiction to exist, I cannot imagine a more proper case for its exercise. It is no light matter for the Commissioners to issue broadcast forms which purport to impose obligations which do not exist and which add a threat of penalty for non-compliance. A general declaration is pre-eminently desirable in these circumstances. And I am a little surprised that the Commissioners do not welcome a decision which will guide their action in the future. Their contention that no Court should interfere unless and until a penalty is sued for seems extravagant." Fletcher Moulton, J., remarked, at p. 168: "I think that an action thus framed is the most convenient method of enabling the subject to test the justifiability of proceedings on the part of permanent officials purporting to act under statutory provisions. Such questions are growing more and more important, and I can think of no more suitable or adequate procedure for challenging the legality of such proceedings.")

Gray v. Spyer, [1921] 2 Ch. 549, [1922] 2 Ch. 22 (Plaintiff landlord sought declarations fixing defendant tenant's option to renew and the validity of notice terminating the tenancy. On appeal, Lord Sterndale remarked, at p. 27: "The plaintiff's claim for a declaration was a convenient method of ascertaining the legal position of the parties without waiting for the time when notice terminated . . . . ")

Guaranty Trust Co. of New York v. Hannay & Co., (*C. A.*) [1915] 2 K. B. 536.

Ruislip-Northwood Urban Dist. Council v. Lee, 145 L. T. 208 (K. B. 1931) (Plaintiff administrative officers sought declaration that defendant's "caravans" were temporary buildings within the meaning of certain public health

statutes. Mackinnon, J., the trial judge, found the declaration "appropriate" as opposed to an action for penalties or injunction after plaintiff had exercised an alleged right under statute to destroy them. On appeal both Scrutton, L. J., and Slesser, L. J., agreed that plaintiffs were entitled to a declaration. Greer, L. J., in concurring, remarked, at pp. 214-5: "If ever there was a case in which it is convenient and right that there should be on the part of a plaintiff a right to a declaration which will make it safe if he acts in accordance with his rights, that is the present case.")

Russian Commercial and Industrial Bank v. British Bank for Foreign Trade, (H. L.) [1921] 2 A. C. 438 (Plaintiff borrower sought a declaration that it was entitled to the possession of certain bonds upon the repayment of the loan in rubles, and injunction. On appeal, Lord Dunedin remarked, at p. 448: "In my opinion, unless you are to rob declarations of much of their real value, this is a case in which a declaration ought to be given.")

Société Maritime et Commerciale v. Venus S. S. Co., 9 Com. Cas. 289 (1904) (Plaintiffs claimed a declaration that a contract for loading ore was no longer binding on them. Channell, J., remarked: "Showing a necessity of a decision upon it, I think they are entitled to a declaration as to whether or not the contract is binding upon them. They are not bound at their peril to perform it and then be liable to heavy damages for not performing it for the space of the next one and one-half years.")

Thomas Borthwick & Sons (Australasia) Ltd. v. Ryan, [1932] N. Z. 225.

West v. Gwynne, 104 L. T. 759 (C. A. 1911) (Plaintiff lessee sought a declaration that defendant lessor could not impose conditions as to division of surplus rental upon his consent to sublet. Cozens-Hardy, M. R., remarked, at p. 761: 'I cannot imagine an instance of a more beneficial exercise of the jurisdiction to make a declaratory order than has been done in this case.")

APPENDIX III.

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The following is a list of signed articles published in recent years:

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Williams, C. *Is declaratory relief constitutional?* 13 Marquette L. Rev. 76-96 (1929).

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20 Columbia Law Review 106 (1920);
43 Harvard Law Review 1290 (1930);
45 Harvard Law Review 717 (1932);
45 Harvard Law Review 1089 (1932);
12 Iowa Law Review 62 (1926);
20 Michigan Law Review 775 (1922);
16 Minnesota Law Review 559 (1932);
78 U. of Pa. Law Review 907 (1930);
5 Temple Law Quarterly 117 (1930);
4 Tennessee Law Review 104 (1926);
11 Virginia Law Review 473 (1925);
38 Yale Law Journal 241 (1928).

The foreign literature on declaratory judgments is voluminous. Among the commentators on section 42 of the Indian Specific Relief Act (on declaratory decrees) the works of Banerji and Sarkar may be recommended. Among the German works on the *Feststellungsklage*, the more important are those of Wach, Degenkolb, Hellwig, Kisch, and Langheineken. Cammeo (an Italian), Parser (a Hollander), Maynard (a Frenchman), and Zumstein (a Swiss) have also written works on the subject. In Germany and Austria, there are a large number of special studies and dissertations on various aspects of the subject; among them, those by Binder, Immerwahr, Ott, Plosz, Petschek, Seidel, Sternberg, Sulzer, and Zimmermann warrant special mention.

APPENDIX IV.

Recent decisions of the Supreme Court of the United States involving judgments which are in effect declaratory include, among others, the following:

Marlin v. Lewallen, 276 U. S. 58 (action for a judgment declaring that plaintiff as surviving husband of Creek Indian was entitled to an estate in curtesy in her land. Claim denied);

Liberty Nat. Bank of Roanoke v. Bear, 276 U. S. 215 (action by a judgment creditor against trustee in bankruptcy for a judgment declaring that his judgment lien was not annulled by subsequent bankruptcy. So held);

Miller v. Schoene, 276 U. S. 272 (action for a judgment declaring invalid an order of state entomologist to cut down plaintiff's cedar trees. Order held valid);

Larkin v. Paugh, 276 U. S. 431 (action for a judgment declaring that plaintiff's title under deed from the heirs was superior to defendant's title under deed from administrator);

Jenkins v. National Surety Co., 277 U. S. 258 (action by a surety against receiver in bankruptcy for judgment declaring surety entitled to participate in certain surplus funds);

Kinney-Coastal Oil Co. v. Kieffer, 277 U. S. 488 (action by lessee of oil and gas lease against patentee of same land under homestead for judgment declaring the platting of lots for sale by latter a violation of leasing rights of former, plus injunction);

Nielsen v. Johnson, 279 U. S. 47 (action by administrator against state treasurer for judgment declaring that tax assessment on decedent's estate was void as contrary to a treaty. So held);

Flink v. Paladini, 279 U. S. 59 (proceeding for judgment declaring petitioners subject to limited liability only);

County of Spokane, Washington v. United States, 279 U. S. 80 (action by U. S. Commissioner of Internal Revenue against County Treasurer for judgment declaring that United States has priority over County in distribution of insolvent's funds in hands of receiver);

Ex parte Worcester County Nat. Bank, 279 U. S. 347 (petition for a decree declaring plaintiff national bank, as successor to state trust company, privileged to present accounts as executor of decedent's estate. Denied);

United States v. Jackson, 280 U. S. 183 (action to quiet title to land deeded by Indian allottee to one R. and declaring R. the owner);

United States v. Guaranty Trust Co., 280 U. S. 478 (action to establish priority of United States over other creditors of insolvent estate. Denied);

United States v. Utah, 283 U. S. 64 (action to quiet title to the beds of described portions of certain rivers in Utah and also adjudging that [on Jan. 4, 1896] "title to the beds . . . . where these rivers were found to be non-navigable," was vested in the United States);

Moore, Trustee in Bankruptcy, v. Bay, 284 U. S. 4 (certiorari to review "an affirmation of an order . . . holding a chattel mortgage to be valid as to creditors whose claims came into existence subsequently to its recordation");

Van Huffel v. Harkelrode, 284 U. S. 225 (bill and decree to quiet title to land against a tax lien asserted by a county treasurer);

Central Pacific Ry. Co. v. Alameda County, 284 U. S. 463 (bill to quiet plaintiff's title to certain land in the county);

Utah v. United States, 284 U. S. 534 (decree which "adjudged that the United States was entitled to certain lands described in the bill of the United States and that the state's title is impressed with a trust in favor of the United States"; coercive relief, if any, was ancillary);

Spencer Kellogg & Sons v. Hicks, 285 U. S. 502 (action to limit liability in a marine accident);

United States v. Smith, 286 U. S. 6 (quo warranto as to whether defendant legally held office in the Federal Power Commission and whether Senate could withdraw its confirmation of a nomination after the President had been notified thereof; "Smith asserts that he was duly appointed to office . . . The Senate disputes the claim");

Page, Trustee, v. Arkansas Natural Gas Corp., 286 U. S. 269 (action to quiet title. Issue, whether lease was property of the bankrupt).

APPENDIX V.

In the following cases a declaration is asked for, plus an injunction or other relief, as incidental or ancillary thereto. The declaration and the relief prayed for are stated after the citation of the case.

John P. King Mfg. Co. v. City Council of Augusta, 277 U. S. 100 (declaration that ordinance invalid, plus injunction);

Nectow v. City of Cambridge, 277 U. S. 183 (declaration that zoning ordinance invalid, plus mandatory injunction to issue permit to build);

Lehigh Valley R. Co. v. Board of Public Utility Com'rs, 278 U. S. 24 (declaration that administrative order unreasonable, plus injunction);

Herkness v. Irion, Commissioner of Conservation, 278 U. S. 92 (declaration of plaintiff's privilege to erect carbon black factory, plus injunction to prevent state interference by refusal of license);

Hunt, Governor of Arizona, v. United States, 278 U. S. 96 (declaration that Governor had no right to arrest United States agents, plus injunction restraining such arrest);

Louis K. Liggett Co. v. Baldridge, Attorney-General, 278 U. S. 105 (declaration that statute was invalid, plus injunction);

Washington ex rel, Seattle Title Trust Co. v. Roberge, 278 U. S. 116 (declaration that condition of zoning law requiring consent of two-thirds of property owners was invalid, plus *mandamus* to issue permit);

Williams v. Standard Oil Co., 278 U. S. 235 (declaration that statute regulating prices invalid, plus injunction);

United States v. Missouri Pacific Ry. Co., 278 U. S. 269 (declaration that order of I. C. C. invalid, plus injunction);

Wisconsin v. Illinois, 278 U. S. 367 (declaration that water diversion invalid, plus injunction);

Frost v. Corporation Commission of Okla., 278 U. S. 515 (declaration that mandatory license was invalid, plus injunction);

Gilchrist v. Interborough Rapid Transit Co., 279 U. S. 159 (declaration that contract rates confiscatory, plus injunction);

Leonard v. Earle, 279 U. S. 392 (declaration that statute requiring surrender of 10% of oyster shells as condition of license invalid, plus *mandamus* to issue without condition);

St. Louis-San Francisco Ry. Co. v. Alabama Public Service Comm., 279 U. S. 560 ("declaration" that statute forbidding abandonment of service invalid, plus injunction);

Standard Oil Co. v. City of Marysville, 279 U. S. 582 (declaration that ordinance requiring storage tanks underground invalid, plus injunction);

White River Lumber Co. v. Arkansas, 279 U. S. 692 (declaration that back taxes were due "and declaring them a lien on the land taxed");

Kirk v. Maumee Valley Elec. Co., 279 U. S. 797 (declaration that plaintiff was immune from interference with his water rights, plus injunction);

Gonzalez v. Roman Catholic Archbishop of Manila, 280 U. S. 1 (declaration that plaintiff entitled to certain appointment, plus direction to appoint);

Atlantic Coast Line Ry. v. United States, 284 U. S. 288 (bill to set aside order of I. C. C.; decree declaring order proper and valid);

First Nat. Bank of Boston, Ex'r, v. Maine, 284 U. S. 312 (action to collect tax referred on agreed statement of facts. Said the Supreme Court: "The question presented for our determination by this appeal is whether the State of Maine has power under the Fourteenth Amendment to impose a tax." Judgment was rendered denying the power of Maine to tax);

Hodge Drive-It-Yourself Co. v. Cincinnati, 284 U. S. 335 (bill to enjoin city ordinance; judgment declaring it valid);

Eastern Air Transport, Inc. v. South Carolina Tax Commission, 285 U. S. 147 (injunction to restrain collection of state tax on sale of gasoline; judgment declaring the tax valid);

Smiley v. Holm, Sec. of State, 285 U. S. 355 (bill to enjoin Secretary of State from redistricting state for elections. "The bill sought to have all filings for nomination *declared illegal*");

Fox Film Corp v. Doyal, 286 U. S. 123 (injunction to restrain collection of state taxes on copyright royalties; judgment declaring tax valid).